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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6901 OF 2006

The Secretary
Don Bosco Yuva Vikas Sanstha ... Petitioner

V/s.

Vandana Vijay Vikas D'souza & Ors. ... Respondents

Mr.A.G. Kothari for Petitioner
Mr.R.P. Gonsalves with Yogesh Rawool for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 16, 2007**

P.C.:

. The petitioner challenges the order of the School Tribunal dated 18.8.2006. By this order, the School Tribunal has set aside the order of termination of services of the respondent teacher which was issued on 30.11.2005. The petitioner was directed to reinstate the respondent teacher with consequential benefits, including continuity of service and backwages.

2. Undisputedly, the respondent No.1 teacher was appointed on 1.6.2002. Her services were terminated by the petitioner on 30.4.2005. Respondent No.1 filed an appeal before the School Tribunal. This appeal was decided on 6.9.2005. The School Tribunal held that the order of termination issued by the petitioner was not in accordance with law and, therefore, set aside the action

of the petitioner. Respondent NO.1 was reinstated in service and paid backwages in accordance with the directions of the School Tribunal. Thereafter, a fresh order of termination of service was issued to respondent No.1. The School Tribunal has decided the appeal on 18.8.2006. In this order, the School Tribunal has taken the view that Respondent No.1 had completed two years of service and therefore, is deemed to be permanent. It was also observed by the School Tribunal that the action of the petitioner in terminating the services of Respondent No.1, without complying with the conditions of law requiring the order to be issued in a particular manner, was illegal. It was observed that the petitioner could not repair the damage already done and issue a fresh order of termination on 3.11.2005.

3. In my view, the reasoning of the Tribunal is incorrect. There is no discussion as to how the Tribunal has arrived at the conclusion that Respondent No.1 is a permanent employee when the petitioner had disputed this fact. In the earlier order of the School Tribunal passed against the termination on 30.4.2005, the School Tribunal had taken a view that Respondent No.1 was a non permanent teacher. The School Tribunal in its order of 18.8.2006 could not have picked certain parts of the order which according to him were favourable to the teacher in order to reach the

conclusion that the management had wrongly issued the order of 30.11.2005. The appeal must therefore be remanded for hearing afresh.

4. The Appeal is accordingly, remanded to the School Tribunal. The Tribunal will decide whether the order terminating the services of Respondent No.1 on 30.11.2005 is legal and valid and passed in accordance with the MEPS Act and Rules. The Tribunal will decide the appeal uninfluenced by the decision in the Appeal No.9 of 2005 decided on 6.9.2005 and the order dated 18.8.2006 in Appeal No.33 of 2005.

5. The Petition is disposed of accordingly. All issues are kept open for the parties to agitate in the appeal before the Tribunal.